

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Robert Derek Lusch Sr.

Write the full name of each plaintiff.

No. _____

(To be filled out by Clerk's Office)

-against-

COMPLAINT

(Prisoner)

New York City Department of

Correction/GMDC (C-73)/Deputy

Warden Lennon/Captain Wickham

Do you want a jury trial?

☐ Yes ☐ No

Write the full name of each defendant. If you cannot fit the names of all of the defendants in the space provided, please write "see attached" in the space above and attach an additional sheet of paper with the full list of names. The names listed above must be identical to those contained in Section IV.

16CV3835

NOTICE

The public can access electronic court files. For privacy and security reasons, papers filed with the court should therefore *not* contain: an individual's full social security number or full birth date; the full name of a person known to be a minor; or a complete financial account number. A filing may include *only*: the last four digits of a social security number; the year of an individual's birth; a minor's initials; and the last four digits of a financial account number. See Federal Rule of Civil Procedure 5.2.

I. LEGAL BASIS FOR CLAIM

State below the federal legal basis for your claim, if known. This form is designed primarily for prisoners challenging the constitutionality of their conditions of confinement; those claims are often brought under 42 U.S.C. § 1983 (against state, county, or municipal defendants) or in a "Bivens" action (against federal defendants).

☒ Violation of my federal constitutional rights

☐ Other: _____

II. PLAINTIFF INFORMATION

Each plaintiff must provide the following information. Attach additional pages if necessary.

<u>Robert</u>	<u>D</u>	<u>Lorch</u>
First Name	Middle Initial	Last Name

State any other names (or different forms of your name) you have ever used, including any name you have used in previously filing a lawsuit.

3491505637

Prisoner ID # (if you have previously been in another agency's custody, please specify each agency and the ID number (such as your DIN or NYSID) under which you were held)

Manhattan Detention Center

Current Place of Detention

125 White St.

Institutional Address

<u>New York</u>	<u>NY</u>	<u>10013</u>
County, City	State	Zip Code

III. PRISONER STATUS

Indicate below whether you are a prisoner or other confined person:

- ☐ Pretrial detainee
- ☐ Civilly committed detainee
- ☐ Immigration detainee
- ☒ Convicted and sentenced prisoner
- ☐ Other: _____

IV. DEFENDANT INFORMATION

To the best of your ability, provide the following information for each defendant. If the correct information is not provided, it could delay or prevent service of the complaint on the defendant. Make sure that the defendants listed below are identical to those listed in the caption. Attach additional pages as necessary.

Defendant 1:

First Name	Lemon	Last Name		Shield #
Deputy warden				
Current Job Title (or other identifying information)				
Current Work Address				
County, City		State	Zip Code	

Defendant 2:

First Name	Wickham	Last Name		Shield #
captain				
Current Job Title (or other identifying information)				
Current Work Address				
County, City		State	Zip Code	

Defendant 3:

First Name		Last Name		Shield #
Current Job Title (or other identifying information)				
Current Work Address				
County, City		State	Zip Code	

Defendant 4:

First Name		Last Name		Shield #
Current Job Title (or other identifying information)				
Current Work Address				
County, City		State	Zip Code	

V. STATEMENT OF CLAIM

Place(s) of occurrence: GMDC Dorm 16 A 5:dc/B 5:dc

Date(s) of occurrence: Nov. 7 2015 - Feb. 9 2016 / Jan. 29 2016

FACTS:

State here briefly the FACTS that support your case. Describe what happened, how you were harmed, and how each defendant was personally involved in the alleged wrongful actions. Attach additional pages as necessary.

-See attached-

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- See attached -

Date:

5/17/2016

When I was in GmOC between the dates of Nov. 7 2015 to Feb. 9 2016 I was housed in Dorm 16A and subjected to below minimum standard living conditions. The dorm stayed at full capacity which was 50 inmates. The dorm had beds for 50 but not living space for 50 inmates. It was such a clustered environment it inhibited my preparation for trial. To a point where I just wanted to cop out (take a plea bargain) to get off the island. It looked like a zoo at full capacity (overcrowded conditions constitute cruel and unusual punishment) (see *Battle v. Anderson* 564 F.2d 388 (10th Cir. 1977)). We as pretrial detainees were also subjected to being housed with convicted inmates that were sentenced or convicted to state time. If an inmate were convicted or sentenced to city time they will go to the 6 Building on the island. However if they were incarcerated for a more serious offense and had to be sent upstate there was no assigned housing for those inmates. Inmates will go to trial and blow (lose trial). Which after the fact they will be housed with pretrial detainees. If I'm only facing 3 to 5 years with me being a first time felon for my charge I shouldn't be housed with an inmate that went to trial and received 105 years or 75 years. Which was the situation pretrial detainees was faced with living in C-73. Somebody with that much time doesn't care about taking somebody's life or seriously disfiguring a person which is cruel and unusual punishment to the people that's not convicted to be housed with those

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The heat was turned on because it was extremely cold outside. However the dorm temperature was lopsided either extremely cold or extremely hot no in between and no ventilation (The lack of adequate ventilation and air flow undermines the health of inmates and the sanitation of the penitentiary) (See *Ramos, supra*, 639 F.2d at 569). Furthermore there was no fire safety in the housing area. I found this out on the 29th day of Jan 2016. I was laying in my bed and a black oily substance started dispersing on an inmate's bed 4 bed away from me named Rafael Solano. The substance was coming from the sprinkler system that was suppose to emit water in case of a fire. The oily substance was dispersing so heavily it started dispersing oil onto all 4 beds in its proximate area which included mine. When the oil hit my face I jumped up and got out the way. It stopped dispersing the oily substance after two minutes. Officer Smiley called the captain and we waited for the captain to inform us what was going on. After 10 minutes Captain Wickham entered the dorm with 2 or 3 maintenance workers. The workers informed us that the substance is just water we should be fine. He stated "I was working on the other side this the only one that went off," referring to the malfunctioning sprinkler head. I then stated "really we just got sprayed with oil because water is not black and silky and all you have to say is this is the only one that went

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officer what was he doing washing the floor there's usually only one officer on the floor. He stated "I'm fire safety for today". I told the officer I know you from the other housing area's your not fire safety your a regular housing officer. I then asked the officer was he even trained for fire safety he told me no. So I told him there's not going to move us to a different dorm even though were at risk of dying from a fire in this dorm because there's no security measures preventing the spread of fire's. yet they move you up here as our protection even though you cant stop the spread of fire's and your not even trained in fire safety. I stated "what this is for the big book to make it look like you all are doing your jobs." He replied "Look im just doing what they want me to do I understand your concerns". Then he tried to reassure me saying "They must be taking it serious IF they are assigning an officer here to work as fire safety when I can be at another post". I told him "they must not be taking it that serious IF we didnt move yet because IF there IS a fire you cant help us you will only die with us". He said I know and shook his head. we stayed in that dorm until Feb. 5 2016 (Pretorial detainee's established claim based on Prison's Inadequate response to fire risk, excessive risk of harm from earthquake, defective plumbing, defective sewage system, excessive noise, and defective lighting) (See Jones v. City and County of San Francisco, 976 F. Supp. 896 (N.D. Cal. 1997)).

INJURIES:

If you were injured as a result of these actions, describe your injuries and what medical treatment, if any, you required and received.

Because of the substandard fire safety prevention devices installed in the housing area I was exposed to an oily substance that sprayed in my eyes as a result of the device malfunctioning. I went to medical to get my eyes washed from any remnants of the exposure.

VI. RELIEF

State briefly what money damages or other relief you want the court to order.

any inmate that's in NYC DOC custody has a right to be housed in housing areas that meet minimum living standards as required by the United States Constitution. Every housing area in the near future should be inspected to see if it meets those requirements prior to housing inmates there. I'm also suing for 1 million dollars (\$1,000,000) in punitive damages.

VII. PLAINTIFF'S CERTIFICATION AND WARNINGS

By signing below, I certify to the best of my knowledge, information, and belief that: (1) the complaint is not being presented for an improper purpose (such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation); (2) the claims are supported by existing law or by a nonfrivolous argument to change existing law; (3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and (4) the complaint otherwise complies with the requirements of Federal Rule of Civil Procedure 11.

I understand that if I file three or more cases while I am a prisoner that are dismissed as frivolous, malicious, or for failure to state a claim, I may be denied *in forma pauperis* status in future cases.

I also understand that prisoners must exhaust administrative procedures before filing an action in federal court about prison conditions, 42 U.S.C. § 1997e(a), and that my case may be dismissed if I have not exhausted administrative remedies as required.

I agree to provide the Clerk's Office with any changes to my address. I understand that my failure to keep a current address on file with the Clerk's Office may result in the dismissal of my case.

Each Plaintiff must sign and date the complaint. Attach additional pages if necessary. If seeking to proceed without prepayment of fees, each plaintiff must also submit an IFP application.

<u>5/18/2016</u>		<u>Robert Lurch</u>
Dated		Plaintiff's Signature
<u>Robert</u>	<u>D</u>	<u>Lurch</u>
First Name	Middle Initial	Last Name
<u>125 White Street</u>		
Prison Address		
<u>New York</u>	<u>NY</u>	<u>10013</u>
County, City	State	Zip Code

Date on which I am delivering this complaint to prison authorities for mailing: 5/18/2016

**CITY OF NEW YORK - DEPARTMENT OF CORRECTION****INMATE GRIEVANCE AND REQUEST PROGRAM**Form: # 7102R
Eff.: 09/10/12
Ref.: Dir. #3376**DISPOSITION FORM**Grievance/Request Reference #:
Lurch, Robert 349-15-05237Date Filed:
3/11/16Facility:
GRVC-15ATitle of Grievance or Request:
NGCategory:
Timeless

From IGRP Inmate Statement Form, print or type short description of request/grievance: I was staying in dorm 16 in GMDC.

There was conditions inmates was subjected to that was unconstitutional. There was molded shower/sinks, no ventilation, unadequate, plumbing, over crowding, people convicted already living with pre-trial detainess, and we was in a dorm without firesafety. It was so out of order ~~the~~ the sprinkler system that didn't work which was suppose to protect inmates for fire department dispense ~~an oily~~ substance on inmates because they weren't properly installed. There was no fire at the time and they were dispersing uncontrollably not when they was supposed to.

Action Requested by Inmate: I don't to be subject to these conditions again. Every housing unit should be livable not some

STEP 1: INFORMAL RESOLUTIONCheck one box: ☐ Grievance ☐ Request ☒ Submission not subject to the IGRP process.

The Inmate Grievance and Request Program proposes to informally resolve your grievance or request as follows below. Alternatively, IGRP staff shall provide an explanation for why the submission is not subject to the IGRP process.

IGRC informed the grievant that timeless are submissions not subject to the IGRP process

Are you satisfied with the proposed resolution?

☐ Yes, I accept the resolution. ☐ No

I request a formal hearing of the Inmate Grievance Resolution Committee within 5 business days from notification of the proposed resolution. I understand that if my submission involves a request to exercise religious beliefs or practices not currently available, then the Committee on Religious Accommodations will review my request

Inmate's Signature:

Date:

Grievance Supervisor's Signature:

Date:

*[Signature]**[Signature]*

3/11/16

**CITY OF NEW YORK - DEPARTMENT OF CORRECTION****INMATE GRIEVANCE AND REQUEST PROGRAM**Form: # 7102R
Eff.: 09/10/12
Ref.: Dir. #3376**DISPOSITION FORM****Attachment - C**

If this is a submission not subject to IGRP process, DOC Grievance Supervisor must choose its category and write down the next steps for the inmate.

- ☐ Staff-on-inmate non-sexual assault (use of force) allegation
- ☐ Staff-on-inmate sexual assault/abuse allegation
- ☐ Staff-on-inmate non-sexual harassment
- ☐ Inmate-on-inmate non-sexual assault allegation
- ☐ Inmate-on-inmate sexual assault/abuse allegation
- ☐ Inmate-on-inmate non-sexual harassment allegation
- ☐ Status as an intended contraband recipient, enhanced restraint, Red ID, or centrally monitored case inmate

- ☐ Medical staff, e.g., complaints regarding quality of care, request for second medical opinion
- ☐ Mental health staff, e.g., complaints regarding quality of care, request for second medical opinion
- ☐ Request for protective custody (fear for safety)
- ☐ Request for accommodation due to disability
- ☐ Inmate disciplinary process and dispositions
- ☐ Freedom of Information law request
- ☒ Other

Next steps:

Forwarded to Deputy Warden

Date of Deadline for Status

Update from Relevant Entity: N/A

Inmate's Signature:

Date:

Grievance Supervisor's Signature:

Date:

3/11/16

STEP 2: FORMAL HEARING OF INMATE GRIEVANCE RESOLUTION COMMITTEE

Formal Hearing Disposition: _____

Date returned to inmate: _____

IGRC Members Signatures: _____

Please decide within five business days of receipt whether to appeal (Check one box below.)

- ☐ Yes, I agree with the IGRC hearing disposition.
- ☐ No, I disagree with the IGRC hearing disposition and seek to appeal to the Commanding Officer.

Inmate's Signature:

Date:

Grievance Supervisor's Signature:

Date:

STEP 3: APPEAL TO THE COMMANDING OFFICER

Grievance Supervisor must check only one box below.

- ☐ Grievance forwarded to the Commanding Officer for action upon IGRC recommendation.
- ☐ Grievance not forwarded to the Commanding Officer (explain): _____

Grievance Supervisor's Signature:

Date:

INMATE GRIEVANCE AND REQUEST PROGRAM STATEMENT FORM

Inmate's Name: Robert Lurch	Book & Case #: 3491505637	NYSID # (optional):	
Facility: GRVC	Housing Area: 15A	Date of Incident: 1/29/2016	Date Submitted: 3/11/2016

All grievances and requests must be submitted within ten business days after the incident occurred, unless the condition or issue is ongoing. The inmate filing the grievance or request must personally prepare this statement. Upon collection by Inmate Grievance and Request Program (IGRP) staff, IGRP staff will time-stamp and issue it a grievance/request reference number. IGRP staff shall provide the inmate with a copy of this form as a record of receipt within two business days of receiving it.

Request or Grievance:

I was staying in room 16 in GUARD. There was conditions inmates was subjected to that was uncomfortable. There was mold in the room, no ventilation, inadequate plumbing over draining people convicted already living with pretrial detentions, and we was in a dorm without fire safety. It was so out of order the sprinkler system that didn't work which was suppose to protect inmates from fire disperse an only substance on inmates because they weren't properly informed. There was no fire at the time and they were dispersing uncertainty not when they was supposed to.

Action Requested by Inmate

I don't want to be subject to these conditions again. Every housing unit should be livable not some.

Please read below and check the correct box:

Do you agree to have your statement edited for clarification by IGRP staff?
Do you need the IGRP staff to write the grievance or request for you?
Have you filed this grievance or request with a court or other agency?
Did you require the assistance of an interpreter?

<input type="checkbox"/> Yes	<input type="checkbox"/> No
<input type="checkbox"/> Yes	<input type="checkbox"/> No
<input type="checkbox"/> Yes	<input type="checkbox"/> No
<input type="checkbox"/> Yes	<input type="checkbox"/> No

Inmate's Signature: Robert Lurch

Date of Signature: 3/11/2016

For DOC Office Use Only

IGRP RETAINS THE DOUBLE-SIDED ORIGINAL FOR ADMINISTRATIVE RECORDS.
IGRP MUST PROVIDE A COPY OF THIS FORM TO THE INMATE AS A RECORD OF RECEIPT.

Time Stamp Below: 3/11/16 CS	Grievance and Request Reference #: NC	Category: Timeless
	Inmate Grievance and Request Program Staff's Signature: CS	

Address Change

My new address IS Manhattan Detention Center/
125 white Street/New York, NY 10013. My name Robert Lurch
and my book and case number IS 3491505637. Any
mail pertaining to this civil suit or any other civil suit
I have. Please forward it to this address.

Thank you,

Robert Lurch

16CV3835

P.S. My old address was 09-09 Hazen Street/East
Elmhurst, NY 11370

I have made copies of every document sent for my records.

RECEIVED
SDNY PROSE OFFICE
2016 MAY 23 PM 3:42

Robert Deren Lutch Sr.
B/c #: 3491505637
125 White Street
New York, NY
10013



USMP3
SDNY

United States District Court
Southern District of New York
Pro Se Intake Unit
500 Pearl Street
New York, NY
10007

